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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/595,256	06/15/2000	Yoshinori Kumasaka	SHC0012	8977

7590

01/19/2005

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Suite 800  
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EXAMINER
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REICHLER, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 01/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/595,256	<b>Applicant(s)</b> KUMASAKA, YOSHINORI	
	<b>Examiner</b> Karin M. Reichle	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 November 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Language Interpretation***

1. Since a specific definition of the claim terminology “a major portion” has not been specifically defined, the usual or common, i.e. dictionary, definition, will be used, i.e. “Of a greater number, quantity or extent”, i.e. more than 50%.

### ***Claim Rejections - 35 USC § 112***

2. Claims 1-6 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A positive structural antecedent basis for “longitudinal end” on line 30 of claim 1 should be set forth, i.e. “end” should be --edge--? Claim 1 also now requires the elastic zone being a separate and discrete element from each of the topsheet and backsheet on lines 22-23 of claim 1 yet be attached to the longitudinal end as set forth on line 30 of claim 1 which end, as best understood, see preceding rejection of line 30, includes the edges of such sheets. Is the elastic zone discrete or attached(the dictionary defines “discrete” as constituting separate thing, distinct, consisting of unconnected distinct parts”)? It is noted that as disclosed the elastic zone is nonmonolithically formed with the covering zone, i.e. the zones are initially discrete but are then attached to each other to form the diaper.

***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Kato et al '547.

See Figures, especially Figures 2-6, the Claim Language Interpretation section *supra*, col. 1, line 65-col. 2, line 27, col. 4, lines 7-15 and 37-60, col. 5, line 1-col. 6, line 20, col. 30, line 8-col. 31, line 21, col. 31, line 59-col. 36, line 12.

Claims 1-3: the front waist region is 24, the rear waist region is 26, the crotch region is 28, the waist opening is 30, the leg openings are 32, the top sheet is 48 of one or more layers and the backsheet is 46 of one or more layers, e.g. 50, 52, the covering zone is at least a portion of 24 and 26 except for the elastic zone, the longitudinal end of the covering zone is 36, *ass best* understood, see paragraph 2 *supra*, and includes a terminal longitudinal edge which coincides with terminal longitudinal edges of each of the topsheet and backsheet, see paragraph bridging cols. 32-33 and col. 33, lines 17-32, i.e. “may be smaller” also infers may not be smaller, as well as col. 4, lines 55-60 again, i.e. note “desirably” does not require extension of one of the layers as well as col. 4, lines 61 *et seq*, i.e. ‘464 and ‘381 show terminal edges of topsheet and backsheet coincide, the nonmonolithically formed elastic zone is 60, and the first member, 66, and second member, 62, as claimed on lines 20-29 of claim 1, claim 2 and claim 3 are disclosed explicitly in the cited portions *supra*. With regard to lines 29 *et seq* of claim 1, as interpreted in light of the paragraph bridging pages 5-6 of the instant specification, the gathers are formed along the entire length when the second member is attached because the second member has

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gathers and extends along the entire length. The specification discloses that the length of the elastic zone is the same as that of the combined first and second members in the contracted state of the first member, see sentence bridging pages 5-6 of the 7-26-02 specification. The second member portion of '256 has gathers along the length thereof due to its being part of a composite elastic material, see portions of reference cited which teach the composition of the first and second members of the elastic zone, and the entire length of at least one of the waist regions will have gathers due to the attachment of the gathered second member to the terminal edge of the covering zone. In the embodiment where there is a recoverable first member, gathering will also be formed due to recovery thereof. It is noted that the gathers in claim 1 and those in claim 3 are deemed to be the same. Finally, more than 50% or a major portion of the elastic zone width 60 extends beyond border 36, see, e.g., Figure 2.

Claims 4-6: It is noted that the covering area as claimed still does not need to encompass the entire circumferential direction of said at least one of said front and rear waist regions. It is also noted that the length in claim 4 is not required to be the initial length as is recited in claim 3. See again Figures 2, 5-6, col. 5, line 41-col. 6, line 20, col. 30, line 8-col. 31, line 21, col. 33, lines 33-39, col. 35, lines 47-65, i.e. the second member is of inelastically stretchable material, the covering zone is nonstretchable because the components thereof are nonstretchable. With regard to claim 6, at the very least, the covering zone along the terminal edge will be stretchable due to the gathering by elastic 88 which can be applied in the tensioned state or recover latent tension adjacent such edge. The stress stretch in a portion of the covering zone extending along the elastic zone, i.e. including such edge, and of the same width as the elastic zone is higher than that of the elastic zone when stretched by 3-20 % since the covering zone portion is more

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inelastic due to increased amount of material therein and the greater distance thereof from the elastic 140 as compared to the amount of material therein and distance thereof from the elastic of the elastic zone, see, e.g., col. 4, line 7-15, i.e. since the covering zone portion is more inelastic the stretch stress thereof will necessarily be higher than that of the elastic zone which is more elastic.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kato et al '547 in view of K-C '550 and Daniels '646.

Applicant claims structure similar to that provided in the waist being provided around each of the leg openings. Kato et al is silent as to the structure of the leg openings. However it is clear from the disclosure thereof that the opening for the legs would be subject to the same problems as the opening for the waist, i.e. lack of comfortable fit over a wide range of sizes and ease of use over an extended period of use. However, it is well known in the absorbent article art as illustrated, for example, by K-C '550 and Daniels that structure similar to that used in the elastic waist system of an absorbent article is also used in the leg opening areas of the article to provide similar benefits and improvements, see Figure 8 and page 7, lines 6-9 of K-C '550 and Figures , col. 1, lines 66-68 and claims 2 and 4 of Daniels. Therefore to provide an elastic

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system similar to that at the waist of Kato et al also around each of the leg hole of the Kato et al device would be obvious to one of ordinary skill in the art in view of the recognition that such a feature would provide similar benefits thereto, i.e. contribute to the comfort of the fit and ease of use, as is well known in the art as illustrated by K-C '550 and Daniels, and the desire of such by Kato et al.

### ***Response to Arguments***

7. Applicant's remarks with regard to the prior art have been considered but are deemed not persuasive because such are narrower than the teachings of '547 which teaches that the edges of the covering zone and sheets may coincide, see the portions of '547 cited supra. It is noted in claim 8, line 5, "forth" should be ----fourth--.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by the amendments to claim 1 and thereby claims 2-6 and 8.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
January 11, 2005